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James W. McKee Fay, Sharpe, Beall, Fagan Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor Cleveland, OH 44114-2518			MILEF, ELDA G	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/768,129

Filing Date: January 23, 2001

Appellant(s): WEISS ET AL.

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Mark S. Svat  
John S. Zanghi  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/20/2007

appealing from the Office action mailed 3/21/2007.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection under 35 U.S.C. §103 to be reviewed on appeal is correct.

**WITHDRAWN REJECTIONS**

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The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

1.) 35 U.S.C. 112 first paragraph.

2.) 35 U.S.C. 112 second paragraph.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,005,925	Johnson et al.	12-1999
6,738,975	Yee et al.	5-2004
6,073,176	Baindur et al.	6-2000
6,363,365.	Kou	3-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (U.S. Patent No. 6,005,925) in view of Yee (U.S. Patent No. 6,738,975) in view of Baindur (U.S. Patent No. 6,073,176) in further view of Kou (U.S. Patent No. 6,363,365).

For examination purposes the Examiner is interpreting resource\_adapters to mean providing for a uniform interface to access application programming interfaces of resources and a caching adapter to mean storage of bid values using cache memory.

**Re claim 1:** Johnson disclose instructions for creating a bid manager agent for issuing a call for bids for usage of said resources, receiving said bids and selecting a best bid from among said bids, wherein each of said bids defines a predetermined context -see (bidding moderator, carriers)-see col. 3;

Instructions for creating a plurality of bidder agents for issuing said bids according to predetermined bidding policies in response to said call for bids ("carriers may submit bids)-see col. 3 lines 53-67;

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Johnson does not specifically disclose a plurality of resource adapters for providing a uniform interface to access application program interfaces of said resources. Yee teaches ("On the one hand, the adapter half of each agent-adapter 200 uses the API of its particular application resource, or any other published interface mechanism...the agent and adapter mediate the differences in interface protocols and data structures, providing a uniform normalized view of the business events that they publish and consume...")-see col. 27 lines 13-39, figs. 4(a) and 4(b). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson to include an adapter in order to transform the data from one application so it can be used by other application.

Although Johnson disclose "The Moderator 1 receives the bids, processes them in its processor to produce carrier selection data, and enters both into a database in its memory by means of the data buses and registers internal to a computer...")- see col. 6 lines 35-51. Johnson and Yee do not specifically disclose issuing said cached bids to said bid manager agent instead of requiring said predetermined bidder agents to issue said bid, and a no-caching adapter for receiving from said bid manager agent said call for bids, re-issuing said call for bids

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to ones of said bidder agents other than said predetermined bidder agents, receiving said bids from said ones of said bidder agents other than said predetermined bidder agents and sending said bids to said bid manager agent. Baindur however, teaches ("a seed bid generally defines as one of the following Default: Only bid for a local call... default base value... Offload: Stack member bids for MLP bundle at all times...manual override: the stack member bids a user provided manual override, Forward-only: Do not bid for any bundle...")-see col. 16 line 66-col. 17 line 26. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson and Yee to include maintaining a default bid in memory to be used if desired by the bidder in order to provide the bidder with various bidding options according to the bidder's capacity to process the event efficiently.

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Johnson, Yee, and Baindur do not explicitly disclose using cache to store bids. Kou however teaches bid cache-see figure 1 and col. 5 lines 65-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Baindur to include using cache memory to store bids in order to quickly access the stored bid information.

**Re claim 2:** Johnson disclose instructions for updating bids in response to new contexts of said bids -see col. 10 lines 36-38. Although Johnson teaches that the bids are stored in memory by means of data buses, and registers internal to a computer-see col. 6 lines 35-38. Johnson, Yee, and Baindur does not specifically indicate that the bids are cached. Kou however teaches bid cache-see figure 1 and col. 5 lines 65-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Baindur to include using cache memory to store bids in order to quickly access the stored bid information.

**Re claim 3:** For purpose of examination, the Examiner is interpreting claim 3 to mean instructions for selecting the best bid by sorting according to decreasing values of said bids and selecting a first available one of said bidder agents. Johnson teaches ("The Moderator collects this bid information from all

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the Carriers, sorts it among originating points.-see col. 1 lines 61-63. Johnson do not specifically disclose sorting bids according to decreasing values. Official notice is taken that it is old and well known in the art of online auctions that sorting bid values according to decreasing value is old and well known. For example, in a reverse auction, a service provider will bid on a service such as airline tickets and the bids are sorted so that the least expensive price is displayed to the buyer. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee, Baindur, and Kou to include sorting bids according to decreasing values as is old and well know in the art of online auctions in order to provide the buyer with the best price for a service.

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**Re claim 4:** Johnson, Yee, and Kou do not specifically disclose wherein each said content is defined by a discrete parameter value. Baindur however, teaches dynamic weighting criteria of bids.-see Abstract and col. 15 line 51-col. 16 line 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Kou to include providing a weight to represent a bid as is taught by Baindur in order to represent the capacity of the bidder to efficiently process the event.

**Re claim 5:** Johnson teaches sending a notification message to said bid manager agent in the event of any changes to its bidding policies, in response to which said bid manager agent updates said caching adapter. -see col. 4 line 29-col. 5 line 29.

**Re claim 6:** Johnson disclose wherein bidding policies are stored via said caching adapter as entries in a table and updating individual ones of said cached bids to reflect said changes in bidding policies. ("The manager keeps track of each carrier's charges and populates the routing table in the "least cost routing" software.")-see col. 1 lines 17-24 ("From the list of all Carriers providing bid information to the Moderator, each Subscriber can select those Carriers to which it wants traffic routed and can change that selection at

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any time. The Subscriber downloads the bid information and/or carrier selection information of those selected Carriers into the routing tables in its switch. ") -see col. 5 lines 7-19. col. 6 line 66-col. 7 line 25

**Re claim 7:** Johnson disclose wherein said bidding policies are stored via said caching adapter as general rules and clearing all of said cached bids.-see col. 12 lines 4-38.

**Re claims 8-16:** Further a method would have been necessary to perform the method of previously rejected claims 1-7 and are therefore rejected using the same art and rationale.

**Re claim 17:** Further an apparatus would have been necessary to perform the method of previously rejected claims 1-7 and are therefore rejected using the same art and rationale.

#### **(10) Response to Argument**

In response to the appellant's argument that the combination of references does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination. *KSR* forecloses Appellants' argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396.

Claims 1-7, 8-16, and 17 recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject

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matter likely would have been obvious under KSR. In addition, neither the Appellants' Specification nor Appellants' arguments present any evidence that modifying Johnson with the selected elements of Yee, Baindur, and Kou was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson to include that "the adapter half of each agent-adapter 200 uses the API of its particular application resource, or any other published interface mechanism...the agent and adapter used to mediate the differences in interface protocols and data structures providing a uniform normalized view of business events" as taught by Yee to allow for transformation of data in order to convert the data formats and applications semantics from the sending application to the receiving application resulting in a "uniform interface."

It would have been obvious to modify Johnson and Yee to include a maintaining a default bid in memory [cached bid] as taught by Baindur in order to be used if desired by the bidder to provide the bidder with various bidding options according to the bidders capacity to process the event efficiently.

It would have been obvious to modify Johnson, Yee, and Baindur to explicitly state that a bid is store in cache

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(memory) as taught by Kou in order to quickly access the stored bid information.

Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396.

The combinations of elements present in Johnson, Yee, Baindur, and Kou merely would have performed the same functions as they do separately, and one of ordinary skill in the art would have recognized that the results of the combination are predictable.

In response to the Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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